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Town & Country Plumbing & Heating, Inc. and Plumbers and Pipe Fitters Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 7–CA–46572

August 29, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

Upon charges filed by the Union on September 3, 2003, against Town & Country Plumbing & Heating, Inc. (the Respondent), the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by withdrawing recognition from its employees' designated collective-bargaining representative. For the reasons discussed below, we find merit in that allegation and shall issue an appropriate remedial order.

On September 28, 2004, the General Counsel, the Respondent, and the Union filed a stipulation of facts and motion to transfer proceedings to the Board. The parties agreed that the charges, the complaint and notice of hearing, the stipulation with appended exhibits, the statement of issues, and each party's statement of position constitute the entire record in this case, and that no oral testimony is necessary or desired. The parties waived a hearing and decision by an administrative law judge. On January 27, 2005, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. Thereafter, the General Counsel, the Union, and the Respondent filed briefs.

On the entire record and the briefs, the National Labor Relations Board¹ makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation with an office and place of business located in Bath, Michigan, is

engaged in the operation of a commercial and residential plumbing service. In the course of conducting its business operations during the calendar year ending December 31, 2002, the Respondent had gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 at its Michigan facility directly from points located outside the State of Michigan.

The parties stipulated and we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Plumbers and Pipe Fitters Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act when, on June 27, 2003, it withdrew recognition from the Union as the exclusive representative of a unit of the Respondent's employees without having bargained in good faith with the Union for a reasonable period of time. The relevant facts are as follows.

1. Background

On May 2, 2000, the Regional Director for Region 7 approved an informal settlement agreement entered into between the Respondent and Union in Cases 7–CA–42335–(1), –(2), –(3), and 7–CA–42820. Pursuant to this agreement, the Respondent agreed, among other things, to post certain notices, and to recognize the Union and bargain in good faith toward an agreement.

Between May 2, 2000, and March 14, 2002,² in compliance with that settlement agreement, the Respondent recognized the Union as the bargaining representative of the unit employees,³ and the parties engaged in collective bargaining. No agreement was reached.

On March 14, based on a petition received from its employees, the Respondent withdrew recognition from the Union.

After the Union filed unfair labor practice charges, a complaint issued on May 21, alleging that the Respondent engaged in numerous violations of the Act, includ-

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² All dates hereafter are in 2002 unless stated otherwise.

³ The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time plumbers and helpers employed by Respondent at and out of its Bath, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

ing making threats and other unlawful statements to employees, creating the impression of surveillance, unlawfully discharging employees, and unlawfully withdrawing recognition from the Union.

On October 29, the parties entered into a formal settlement stipulation providing for the entry of a consent Order by the Board and for judicial enforcement of that Order. The stipulation stated that it “is subject to the approval of the Board, and it does not become effective until the Board has approved it.”

On February 3, 2003, the Board issued a Decision and Order approving the October 29 settlement stipulation. The Board’s Order required, among other things, that the Respondent cease and desist from engaging in the conduct alleged in the complaint, recognize and bargain in good faith with the Union as the exclusive representative of the unit employees, and reduce to writing any agreement reached with the Union.

On September 16, 2003, the United States Court of Appeals for the Sixth Circuit entered a judgment enforcing the Board’s Order.

2. Bargaining

On October 31, 2002 (right after the parties entered into the Formal Settlement Stipulation), the Union’s organizer, David Knapp, sent a letter to the Respondent’s president, Bernard Deyarmond, expressing the Union’s interest “in getting back to the table as soon as possible.” Knapp’s letter also requested information regarding the unit employees, including each employee’s then-current wage rate, and the date and amount of all wage increases received by employees during the preceding 3 years.

The Respondent’s attorney, Timothy Ryan, responded to Knapp by letter dated November 6, 2002, offering November 20, 21, or 22, as potential bargaining dates. Ryan’s letter also provided some of the information requested by the Union.

Knapp accepted the November 20 proposed bargaining date. However, Ryan subsequently advised Knapp that November 20, “is not an available date” for the Respondent. Ryan further stated:

I note that the formal settlement . . . requires that within fourteen (14) days of an order from the board that Town and Country recognize your Union and engage in good faith collective bargaining. Since the Board has not issued any such order as a technical matter, the settlement agreement does not require Town and Country to recognize and meet with your union at this time. However, it is not Town and Country’s intention to wait until the Order is actually issued. Therefore, we offer December, 2, 3, 4, and 5.

The parties thereafter agreed to meet on December 5. However, prior to December 5, Knapp suffered a severe illness.⁴ Jim Davis, the Union’s business agent, assumed Knapp’s lead bargaining role, and requested that the December 5 bargaining session be cancelled. The Respondent did not oppose this request. The parties eventually met for negotiations on January 16, 2003.⁵ This was the first of three bargaining sessions that were held prior to the June 27 withdrawal of recognition. Each session lasted about 2 hours.

During the first bargaining session, the parties discussed economic issues. Respondent President Deyarmond requested a copy of the Union’s building trade agreement, and expressed his desire for a proposal from the Union that would keep the Respondent competitive. Davis responded that the Respondent’s pay rates were close to the Union’s rates. Deyarmond answered that the inclusion of union benefits could impact the Respondent’s ability to be competitive. The parties also discussed the implications of the fact that the Respondent’s work was currently “portable,” with employees able to work anywhere in the State without restriction. To that end, Davis stated that the Union had a National Residential Agreement that could be adjusted to cover work performed anywhere in the United States or Canada. Davis said that the Union wanted to work with the Respondent, that he would speak to union officials about adjusting the geographic wage rates, and that he would need information from the Respondent on the current cost of the Respondent’s wage and benefit package.⁶

At the next negotiation session on February 13 (the first after the Board approved the settlement stipulation), the parties continued discussing economic issues. The Union presented the Respondent with copies of the Union’s National Residential Agreement. Davis stated he could set up a schedule A to the agreement, which would be a special contractor agreement as to the total wage and benefit package. The parties discussed the fact that the Respondent could perform work anywhere in the United States under the agreement, and they also discussed the benefits the Respondent currently provided to its employees. At the end of the session, Davis stated that he would prepare for the Respondent’s consideration a schedule A attachment to the National Residential Agreement.

On March 7, Davis faxed a schedule A proposal to Ryan. By letter to the Union dated March 14, Ryan counterproposed that the Respondent would be willing to

⁴ The illness left him fully disabled until March 2003.

⁵ All dates hereafter are in 2003 unless stated otherwise.

⁶ The Respondent provided certain wage information by letter dated February 7.

sign the National Residential Agreement with eight exceptions.⁷

The parties met for a third, and what turned out to be their final, negotiation session on May 21. At this meeting, the Union presented proposals covering commercial and residential work that the parties had previously discussed in 2001.⁸

The parties also discussed the Respondent's March 14 counteroffer. Knapp said that the Union could work with the Respondent on some of the items it had counterproposed, including wages and cost containment in the excavation side of the Respondent's business. Deyarmond and Ryan responded that they were concerned about the cost of the Union's health care proposal. Knapp said that in order to evaluate the Respondent's concern, the Union needed information on the Respondent's current health insurance costs. Knapp stated that he would confer with Davis upon receipt of the requested information, and also indicated that the Union would offer a counterproposal on the benefit issues at the next negotiation session. The Respondent subsequently provided the requested information.

On June 27, the Respondent withdrew recognition based on its receipt of a petition signed by a majority of its unit employees indicating that they no longer wished to be represented by the Union. As of that date, the parties had agreed on most of the terms of the contract, but remained apart on the economic issues. The parties were not at impasse.

B. The Parties' Contentions

The General Counsel contends⁹ that the Respondent was obligated to bargain in good faith for a reasonable period of time of at least 6 months as a consequence of the October 29, 2002 settlement stipulation.¹⁰ The General Counsel argues that the reasonable period of bargaining commenced on one of two dates: February 3, the date the Board approved the settlement agreement, or January 16, the date the parties first met in face-to-face negotiations.¹¹ The General Counsel asserts that, under either date, the Respondent had not bargained for a reasonable period when it withdrew recognition on June 27. The General Counsel further argues that even if the reasonable period had commenced on an earlier date—and thus the Respondent had bargained in good faith for at least 6 months—the particular circumstances here require extending the reasonable period beyond 6 months, and that the reasonable time for bargaining had not elapsed when the Respondent withdrew recognition.

The Respondent argues that it withdrew recognition following a reasonable period of bargaining. It contends that the reasonable period should be measured from the date the settlement was approved by the Regional Director, on October 29, 2002, and thus nearly 8 months had elapsed before it withdrew recognition. The Respondent further asserts that there are no particular circumstances in this case that warrant extending the reasonable period beyond a minimum of 6 months.

As explained below, we find that the reasonable period for bargaining commenced no earlier than January 16, and that the parties did not bargain for a reasonable period of time before the Respondent withdrew recognition

⁷ The eight listed exceptions were:

- (1) The exclusion of any excavation work from the agreement.
- (2) The Respondent would continue to provide its current Physicians Health Plan coverage to full time employees, but would not contribute to the Union's Health and Welfare Plan. The Respondent would pay an additional \$1 per hour in wages to any employee who voluntarily declined coverage.
- (3) The Respondent would make pension contributions of \$1 per hour for all employees.
- (4) The Respondent would not contribute to the Union's S.U.B., Scholarship, Training, or Industry Funds.
- (5) The June 1, 2004, "and or" (sic) June 1, 2005, wage rates would be increased by 3.5%.
- (6) The Respondent would retain the right to pay higher wages than those required by Schedule A.
- (7) The contract would terminate on June 1, 2005.
- (8) The rates set forth in Schedule A would apply throughout the State of Michigan, except for the counties of Washtenaw, Oakland, and Wayne.

⁸ Some portions of both proposals had been tentatively agreed to during the 2001 negotiations.

⁹ The Union replicates the General Counsel's arguments.

¹⁰ The General Counsel cites in support *AT Systems West, Inc.*, 341 NLRB 57, 61 (2004) (holding that a union is entitled to a "reasonable period of time" of good-faith bargaining after settlement of unfair labor practices that have disrupted bargaining before an employer may withdraw recognition based on lack of majority status); and *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001), *enfd.* 310 F.3d 209 (D.C. Cir. 2002) (reasonable period of time for bargaining following such interruption [with incumbent union] should be at least 6 months). We note that in *Lee Lumber* the Board stated that it "shall decide in other cases, where the issues are presented, what constitutes a reasonable time for bargaining when an employer . . . entered into a settlement agreement requiring bargaining . . ." *Lee Lumber*, *supra* at fn. 7.

¹¹ In support of commencing the reasonable period on February 3, the General Counsel cites *Gerrino Restaurant*, 306 NLRB 86, 89 (1992), and *King Soopers, Inc.*, 295 NLRB 35, 38 (1989), which involved informal settlement agreements wherein the reasonable period for bargaining commenced on the date the settlements were approved by the Regional Director. In support of a commencement date of January 16, when the parties first met, the General Counsel cites *Jasco Industries*, 328 NLRB 201 (1999) (extension of the certification year is measured from the date "when face-to-face negotiations began").

of the Union. Therefore, the Respondent's withdrawal of recognition violated Section 8(a)(5) and (1) as alleged.

C. Discussion

It is well settled that the Act requires an employer to bargain in good faith for a reasonable period of time after the settlement of unfair labor practices that disrupted bargaining. Only then may an employer lawfully challenge the union's majority status and withdraw recognition.¹²

The parties do not dispute this basic principle. As set forth above, however, they do disagree over the date on which the reasonable period of bargaining commenced and whether the parties had bargained for a reasonable period.

Addressing the commencement date for measuring the period of bargaining, we note that the cases cited by the parties do not specifically address the circumstances here, i.e., when bargaining is required pursuant to a formal Board settlement. Based on those cases, however, the parties have suggested three possible commencement dates: (a) October 29, 2002, the date the Regional Director approved the parties' formal settlement; (b) January 16, 2003, the date of the parties' first face-to-face bargaining session; and (c) February 3, 2003, the date the Board approved the formal settlement.

The Respondent endorses October 29, the first and earliest possibility. The Respondent correctly points out that, when bargaining is required pursuant to an informal settlement of unfair labor practice charges, the reasonable period is measured from the date the settlement was approved by the Regional Director. See *AT Systems West*, 341 NLRB 57, 62 (2004); *Gerrino Restaurant*, 306 NLRB 86, 89 (1992). The Respondent contends that the Regional Director's approval of the parties' formal settlement should, likewise, commence the reasonable period for bargaining. We disagree.

The Respondent's contention glosses over a crucial distinction between a Regional Director's approval of an informal settlement and his approval of a formal settlement. A Regional Director's approval of an informal settlement triggers the parties' duties under the settlement, including any provided-for duty to bargain.¹³ By contrast, a Regional Director's approval of a formal settlement, including one containing a bargaining obligation, is tentative and conditional. The proposed formal

settlement remains contingent on the approval of the Board. See Section 101.9(c)(2) of the Board's Rules and Regulations.

That distinction between formal and informal settlements, moreover, is clearly embraced by the parties' October 29 settlement and by the Respondent's statements at the time. By its terms, the settlement was "subject to the approval of the Board" and did "not become effective until the Board ha[d] approved it." Further, the Respondent emphasized that fact in its November 20 letter to the Union stating, "Since the Board has not issued [an] order . . . the settlement agreement does not require [the Respondent] to recognize and meet with [the Union] at this time." In these circumstances, we are unable to accept the Respondent's contention that the reasonable period for bargaining commenced on October 29.¹⁴

We thus are left to consider the General Counsel's proposed dates, i.e., whether the period for bargaining should be measured from January 16, 2003, the date of the parties' first postsettlement bargaining session, or February 3, 2003, the date the Board approved the formal settlement agreement. As explained below, however, we find that the reasonable period had not elapsed even when measured from the earlier of those dates. Accordingly, we find it unnecessary to choose between them or to consider alternative, later commencement dates (which the General Counsel has not advocated).¹⁵

Our finding that the parties had not bargained for a reasonable period, even assuming a January 16 commencement date, is based on the following factors, set forth in *AT Systems West, Inc.*, supra at 61, and cases cited therein:

[W]hether the parties were bargaining for an initial agreement, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties were to agreement, and the presence or absence of a bargaining impasse.¹⁶

¹⁴ As a result, we find it unnecessary to consider the General Counsel's argument that the Respondent's withdrawal of recognition was unlawful even if the reasonable period had commenced on that date.

¹⁵ Thus, we find it unnecessary, for example, to consider whether the reasonable period should be measured from an even later date in these circumstances, i.e., from February 13, 2003, when the parties held their first bargaining session following the Board's approval of the formal settlement.

¹⁶ Also, see generally *Lee Lumber*, supra at 402-405, and cases cited therein. As noted above, the General Counsel argues that under *Lee Lumber* the reasonable period of time in this case must be at least 6 months. However, there the Board declined to decide whether a 6-month minimum applies when parties enter into a settlement agreement requiring bargaining. Because we find, under the traditional factors

¹² See generally *AT Systems West*, supra at 61; *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), enf'd. 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952).

¹³ In the event of noncompliance, the Regional Director is empowered to set aside the settlement and institute, or reinstitute, formal proceedings against the respondent. See Secs. 101.7 and 101.9(e)(2) of the Board's Rules and Regulations.

Applying these factors, we find at the outset that the first and last factors weigh in favor of finding that a reasonable period for bargaining had not elapsed. Indeed, it is undisputed that the parties were bargaining for an initial contract and that they were not at impasse when the Respondent withdrew recognition.

The second factor, the complexity of the issues and the parties' bargaining procedures, weighs somewhat in favor of finding that a reasonable period for bargaining had expired. Although only three bargaining sessions shed light on this factor, the record does not reveal that the parties experienced any particular bargaining complexities, either with respect to the issues or the procedures.¹⁷

The third factor, however, the amount of time elapsed and number of bargaining sessions, weighs heavily in favor of finding that the parties had not bargained for a reasonable period. The period of bargaining prior to the Respondent's withdrawal of recognition lasted 5½ months, at most. During that period, the parties held just three negotiating sessions, each lasting 2 hours. There was also one exchange by fax and mail, but that was limited to the Union sending the Respondent a schedule A to its National Residential Agreement, and the Respondent answering that it would sign that agreement with certain exceptions. By any standard, this amounts to only a small amount of actual bargaining time. As such, it indicates that a reasonable period of bargaining had not elapsed when the Respondent withdrew recognition.¹⁸

The final factor, the amount of progress and how near the parties were to agreement, does not weigh heavily in either direction in the circumstances. As the Board explained in *Lee Lumber*, supra at 404, "which way th[is] factor cuts depends on the context." Thus, "when nego-

tiations have nearly produced a contract, it is reasonable that the parties should have some extra time in which to attempt to conclude an agreement." Id. That reasoning, however, typically does not apply when the parties merely made progress but were still not close to reaching an agreement. Id. at 404–405.

Here, the parties made progress, but it does not appear that they were on the verge of concluding an agreement. Indeed, they were still negotiating virtually all of the economic issues when the Respondent withdrew recognition. The plentitude of unresolved issues is not surprising, however, given the brief time the parties spent negotiating. Consequently, even if this factor suggests that a reasonable period had elapsed, it does only slightly, because the parties held only three negotiation sessions for their first contract.

In sum, application of the pertinent factors to the particular facts here demonstrates that the parties did not bargain for a reasonable period of time before the Respondent withdrew recognition. The most probative facts are that the parties were bargaining for their first contract, that they were not at impasse, and that they held just three, 2-hour, bargaining sessions. Those facts clearly outweigh the countervailing considerations, i.e., that the parties neither experienced any particular bargaining complexities nor were they on the verge of an agreement. Accordingly, we find that the Respondent's withdrawal of recognition violated Section 8(a)(5) and (1) as alleged.

REMEDY

Having found that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. For the reasons set forth below, we shall enter an affirmative bargaining order, which requires bargaining for at least a reasonable period of time as the appropriate remedy for the Respondent's unlawful withdrawal of recognition from the Union.

We adhere to the view, reaffirmed by the Board in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, supra at 68 (1996). In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g. *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material*

listed above, that the parties had not bargained for a reasonable period from January 16 to June 27—some 5½ months—we find it unnecessary to address whether a minimum 6-month period is mandated here.

¹⁷ As explained above, the parties bargained by working off of copies of the Union's existing agreements, the National Residential Agreement and the Building Trades Agreement. They also agreed at their second meeting to set up a Schedule A to the Residential Agreement in order to address wages and benefits. Further, at the parties' third and (what turned out to be) final bargaining session on May 21, the Union's negotiator (Davis) expressed a willingness to move towards several of the Respondent's positions, and added that he would offer a new proposal on benefits at their next meeting. Thus, the record shows that the parties engaged in constructive, albeit very limited, contract discussions during the bargaining period.

¹⁸ See generally, *Lee Lumber*, supra at 405–406 (five bargaining sessions in little over a month weighed heavily against finding that a reasonable period elapsed); *Driftwood Convalescent Hospital*, 302 NLRB 586, 589 (1991) (reasonable period did not elapse after two negotiations during an 83-day period); *Stant Lithograph*, 131 NLRB 7 (1961), enf'd, 297 F.2d 782 (D.C. Cir. 1961) (three bargaining sessions of 2 hours each over a 1½-month period did not constitute a reasonable period for bargaining).

Corp. v. NLRB, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent Industrial Plastics*, supra, the court stated that an affirmative bargaining order “must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees’ Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.” 209 F.3d at 738. Consistent with the court’s requirement, we have examined the particular facts of this case and we find that a balancing of the three factors warrants an affirmative bargaining order.¹⁹

(1) As the Board stated in *Parkwood Developmental Center, Inc.*,²⁰ an affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent’s unlawful withdrawal of recognition and resulting refusal to bargain with the Union for a collective-bargaining agreement. The Respondent withdrew recognition from the Union without allowing for a reasonable period of bargaining following its formal settlement of the unfair labor practice allegations in Case 7–CA–44939–(1), –(2). At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union’s continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation, as the order is not of indefinite duration but for a reasonable period of time sufficient to allow the good-faith bargaining that the Respondent’s unlawful withdrawal of recognition cut short. It is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees’ Section 7 right to union representation is vindicated. It will also give employees an opportunity to fairly assess the Union’s effectiveness as a bargaining representative and determine whether continued representation by the Union is in their best interests.

(2) An affirmative bargaining order also serves the Act’s policies of fostering meaningful collective bargain-

ing and industrial peace. It removes the Respondent’s incentive to delay bargaining in the hope of discouraging support for the Union, and it ensures that the Union will not be pressured to achieve immediate results at the bargaining table—results that might not be in the employees’ best interests. It fosters industrial peace by reinstating the Union to its rightful position as the bargaining representative chosen by a majority of the employees. Also, as mentioned, providing this temporary period of insulated bargaining will afford employees a fair opportunity to assess the Union’s performance in an atmosphere free of the effects of the Respondent’s unlawful withdrawal of recognition and refusal to bargain.

(3) As an alternative remedy, a cease-and-desist order alone would be inadequate to remedy the Respondent’s withdrawal of recognition and refusal to bargain with the Union, because it would allow another challenge to the Union’s majority status before the employees had a reasonable time to regroup and bargain with the Respondent through their chosen representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair where the Respondent’s unlawful refusal to recognize and bargain with the Union has continued since June 27, 2003, and has likely undermined employee support for continued union representation. Such a result would also be particularly unfair here, where litigation of the Union’s charges took several years and, as a result, the Union needs to reestablish its representative status with unit employees. Indeed, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.²¹

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violation in this case.

ORDER

The Respondent, Town & Country Plumbing & Heating, Inc., Bath, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from the Union, Plumbers and Pipefitters Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry of the United States and Canada, AFL–CIO, and refusing to bargain with it as the exclu-

¹⁹ Chairman Schaumber does not agree with the view expressed in *Caterair International*, supra, that an affirmative bargaining order is “the traditional, appropriate remedy for an 8(a)(5) violation.” He agrees with the United States Court of Appeals for the District of Columbia Circuit that a case-by-case analysis is required to determine if the remedy is appropriate. *Saginaw Control and Engineering*, 339 NLRB 541, 546 fn. 6 (2003). He recognizes, however, that the view expressed in *Caterair International*, supra, represents extant Board law. *Flying Foods*, 345 NLRB 101, 109 fn. 23 (2005), enf’d. 471 F.3d 178 (D.C. Cir. 2006).

²⁰ 347 NLRB 974, 976 (2006), enf’d. 521 F.3d 404 (D.C. Cir. 2008).

²¹ *Parkwood*, supra at 977; see also *Goya Foods of Florida*, 347 NLRB 1118, 1123 (2006), enf’d. 525 F.3d 1117, (11th Cir. 2008); *Smoke House Restaurant*, 347 NLRB 192, 194 (2006).

sive collective-bargaining representative of the employees employed in the bargaining unit described below.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time plumbers and helpers employed by Respondent at and out of its Bath, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its Bath, Michigan facility, copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 27, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unlawfully withdraw recognition from the Union, Plumbers and Pipefitters Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, and refuse to bargain with it as the exclusive collective-bargaining representative of our employees employed in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time plumbers and helpers employed by Respondent at and out of its Bath, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

TOWN & COUNTRY PLUMBING & HEATING, INC.